

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JEFFREY LAMAR AURSBY,
Plaintiff,

v.

DAVID AUXTER, et al.,
Defendants.

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CIVIL ACTION NO. 19-CV-4849

ORDER

AND NOW, this 29th day of June, 2020, upon consideration of Jeffrey Lamar Aursby's Motion to Proceed *In Forma Pauperis* (ECF No. 1), Prisoner Trust Fund Account Statement (ECF No. 8), *pro se* Complaint (ECF No. 2), February 6, 2020 Letter (ECF No. 11), and "Motion for Pro Bono, to Amend Complaint and Special Relief Injunctions" (ECF No. 12), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Jeffrey Lamar Aursby, # LE-4014, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of State Correctional Institution – Dallas or another appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Aursby's inmate account; or (b) the average monthly balance in Aursby's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Aursby's inmate trust fund account exceeds \$10.00, the

Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Aursby's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is directed to **SEND** a copy of this Order to the Superintendent of State Correctional Institution – Dallas.

4. The Complaint is **DEEMED** filed.

5. The Complaint is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons stated in the Court's Memorandum. Aursby may file new claims as follows:

- a. To the extent Aursby seeks to challenge his conviction and imprisonment or seeks damages based on his conviction and imprisonment, his claims may be reasserted only in the event that his underlying conviction is reversed, vacated, or otherwise invalidated.
- b. To the extent Aursby can identify damages distinct from his conviction and imprisonment, Aursby may file an amended complaint within thirty (30) days of the date this Order is mailed to him.¹ Any amended complaint must clearly state the factual basis for Aursby's claims: it must identify the unconstitutional behavior of each Defendant and it must allege facts to support Aursby's claim that the Defendants did not have probable cause for the search and seizure. The amended complaint shall be a complete document that does not rely on the initial Complaint or other papers filed in

¹ Due to restrictions caused by COVID-19, there may be some delay in sending this Order and related documents to Aursby. These documents will be sent as soon as practicable.

this case to state a claim. When drafting his amended complaint, Aursby should be mindful of the Court's reasons for dismissing the claims in his initial Complaint as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

6. The Clerk of Court is **DIRECTED** to send Aursby a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Aursby may use this form to file his amended complaint if he chooses to do so.

7. The Clerk of Court is **DIRECTED** to send Aursby a copy of the updated docket in this matter, along with ECF Nos. 5, 6, 7, 8, 9, 10, 11, and 12.

8. Aursby's "Motion for Pro Bono, to Amend Complaint and Special Relief Injunctions" (ECF No. 12) is **GRANTED IN PART** to the extent that Aursby can file an amended complaint as described above. The motion is otherwise **DENIED** without prejudice as explained in the Court's memorandum.

BY THE COURT:

/s/ Juan R. Sánchez
JUAN R. SÁNCHEZ, C.J.